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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,363	02/07/2002	Thomas W. Urbanek	LAMA118700	6048
26389	7590	12/03/2003		EXAMINER
CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			CAMERON, ERMA C	
			ART UNIT	PAPER NUMBER
			1762	

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/068,363	<b>Applicant(s)</b> URBANEK ET AL.
	<b>Examiner</b> Erma Cameron	<b>Art Unit</b> 1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on \_\_\_\_.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

- 4)  Claim(s) 1-42 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-42 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s)      6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

1. The applicant desires priority under 35 U.S.C. 119 (e) based upon a previously filed application, based on the preliminary amendment filed 6/10/2002, but the oath fails to claim this priority.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 2 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a) Claims 2 and 12: it is not clear when the base is applied, before, during or after the application of the oxidizer.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 27 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The examiner cannot find where in the specification there is reported that sodium carbonate is used in the claimed invention. Should this be sodium percarbonate instead?

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-8, 10-18, 20-26 and 29-42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by WO 98 / 54398.

‘398 teaches the application of a metal salt such as iron sulfate (example 8; pp 8-9) in aqueous solution at 0.001-20 w/v % (p 11) to masonry materials such as cement and concrete (p 10), followed by the application of an oxygen source such as a peroxide, including hydrogen peroxide or sodium peroxide (p 9) at 0.1-50 w/v % (p 11) in aqueous solution (p 11). This develops color in the concrete or cement (see examples). The pH of the oxidizer solution may be varied by addition of a base (pp 10 and 23; claim 31), which would inherently raise the pH to

above 7. Both solutions may contain additional additives, such as alcohol (pp 10, 24, 26). The '398 process avoids chromium compounds (p 18).

8. Claims 1, 3-6, 11, 13-16, 21-25, 29-30, 35-38 and 40-42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by JP 08-259356.

'356 teaches application of a metal salt such as manganese acetate to concrete, followed by an aqueous oxidizer such as hydrogen peroxide, in order to develop a colored concrete product (see Abstracts).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 9, 19, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98 / 54398.

'398 is applied here for the reasons given above.

'398 fails to teach sodium percarbonate as one of the oxidizers used. However, '398 only claims that an oxygen source be used (p 4, 7, 9) and that compounds other than peroxides may be

used as the oxygen source (p 19). This would be inclusive of sodium percarbonate as the oxygen source.

‘398 fails to teach the application of the oxidizer in powder form to the masonry, but also teaches that the application of oxygen sources may be accomplished through “preparations other than water or aqueous solutions... (such as) a gel, paste, emulsion, or other thick preparation” (p 18). It would have been obvious to one of ordinary skill in the art to have utilized a powder application through no more than routine experimentation, given the teaching by ‘398 that a variety of application methods may be used.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erma Cameron whose telephone number is 703-308-2330 (571-272-1416 after Dec 9, 2003). The examiner can normally be reached on 8:30-6:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on 703-308-2333 (571-272-1415 after 12/9/03). The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*Erma Cameron*  
**ERMA CAMERON**  
**PRIMARY EXAMINER**

Erma Cameron  
Primary Examiner  
Art Unit 1762

November 30, 2003